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BACKGROUND PAPER ON THE
MAJOR PROVISIONS OF SUPERFUND REAUTHORIZATION

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INTRODUCTION

The Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), commonly known as Superfund, was enacted in 1980. This law provided broad Federal authority to respond directly to releases or threatened releases of hazardous substances that may endanger public health or welfare or the environment. Costs for this program were originally covered by a \$1.6 billion Hazardous Substance Response Trust Fund. This fund was designed to pay for cleanup operations, enforcement action, and the recovery of costs from responsible parties.

On October 17, 1986, President Reagan signed into law the Superfund Amendments and Reauthorization Act of 1986 (SARA). These Amendments increase Superfund revenues to \$8.5 billion, and strengthen the EPA's authority to conduct short-term (removal), long-term (remedial) and enforcement actions. The Amendments also strengthen State involvement in the cleanup process and the Agency's commitment to research and development, training, health assessments, and public participation. A number of new statutory authorities, such as Community Right-to-Know are also established.

This background paper summarizes the major provisions of the new Superfund law. Figure 1 provides a comparison of the original law and SARA.

THE REMOVAL PROGRAM

A "removal action" is generally a short-term action intended to stabilize or clean up a hazardous incident or site threatening human health and welfare or the environment. Specifically, removal actions may include removing and disposing of hazardous substances; constructing a fence around a site; collecting and analyzing soil, air and water samples; providing alternative water supplies to local residents; or temporarily relocating residents from the area. Removal actions were originally limited to 6 months and a total cost of

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\$1 million. Exemptions to these limits could be granted if continued Federal response was necessary to prevent, limit, or mitigate an emergency, if there was an immediate risk to public health, welfare or the environment, and if such assistance was not otherwise available on a timely basis.

New Statutory Requirements

The Superfund Amendments of 1986 raise the dollar amount and time limitations on removal actions to \$2 million and 12 months. In addition, the law adds a fourth independent condition under which EPA may waive these limitations. A removal action may continue beyond the \$2 million/12 month limits if it meets the three exemption requirements outlined above or if it is consistent with the long-term remedial action to be taken at the site.

THE REMEDIAL PROGRAM

A "remedial action" is a long-term remedy for a release or threatened release of a hazardous substance at a hazardous waste site. Specific remedial actions may include the removal of drums or soil containing wastes from the site; the construction of a cap over the site; the construction of dikes to control surface water; incineration of wastes; subsurface cleanup of contamination; treatment of contaminated water or provision of alternate water supplies; or the permanent relocation of residents from the area. Superfund-financed remedial actions may be taken only at sites included on the National Priorities List (NPL), the Agency's list of the Nation's most serious hazardous waste sites. The Superfund Amendments of 1986 provide new requirements for the remedial program.

Cleanup Standards

The original Superfund law did not address cleanup requirements but directed EPA to analyze the cost-effectiveness of the remedial action alternatives. The revised National Contingency Plan did establish a compliance with other environmental statutes policy and directed EPA to consider the use of alternative technologies in choosing a remedial action. Under the new Superfund Amendments, EPA must continue to consider the cost-effectiveness of the clean-up alternatives as well as the following new statutory requirements:

- Standards: EPA is required to select remedies that meet standards under any Federal or State environmental law that apply to the hazardous substance being addressed or are relevant and appropriate under the circumstances. These standards may be waived under certain limited conditions.
- Permanent Solutions: EPA must select cost-effective remedial actions consistent with the National Contingency Plan (NCP).^{*} These actions must also, to the maximum extent practicable, be permanent solutions to protect human health and the environment, and use alternative treatment or resource recovery technologies.
- Off-Site Actions: All hazardous substances transported from hazardous waste sites must be taken to a facility that is operating in compliance with the Resource Conservation and Recovery Act (RCRA), the Toxic Substances Control Act (TSCA), or other applicable Federal and State laws.

Mandatory Schedules

The Superfund Amendments establish goals for the evaluation of sites contained in CERCLIS (an inventory of potentially hazardous waste sites), as well as mandatory schedules for beginning new Remedial Investigations/Feasibility Studies (RI/FS) and new remedial actions for sites on the National Priorities List (NPL). For example, EPA must start Remedial Investigation/Feasibility Study work at 275 Superfund sites by October 1989. In addition, actual remedial cleanup activities must begin at 175 sites by October 1989, with an additional 200 remedial cleanup activities during 1990 and 1991.

Health-Related Authorities

These new provisions significantly expand the health-related authorities under SARA to include a list of hazardous substances, toxicological profiles, health effects research and health assessments at all NPL sites. The responsibility for

^{*} Officially known as the National Oil and Hazardous Substances Pollution Contingency Plan, the NCP is the central Superfund regulation and outlines the responsibilities and authorities for responding to releases into the environment of hazardous substances and other pollutants and contaminants under the statutory authority of CERCLA and section 311 of the Clean Water Act.

conducting these tasks rests primarily with the Agency for Toxic Substances and Disease Registry (ATSDR) within the Department of Health and Human Services (HHS), in consultation with EPA. Specifically, these new provisions include:

- List of Substances: Within six months of enactment, EPA and ATSDR must prepare a list of at least 100 hazardous substances, commonly found at NPL sites, posing the most significant threat to human health.
- Toxicological Profiles: ATSDR must prepare toxicological profiles for each of the listed substances according to a mandatory schedule. A toxicological profile includes a summary of available information on the toxic effects to humans from exposure to a substance.
- Health Effects Research: If ATSDR and EPA determine that adequate information is not available for any of the listed substances, ATSDR must undertake a research program, including laboratory studies, to determine the health effects of those substances.
- Health Assessments: ATSDR must perform health assessments at every NPL site according to a mandatory schedule. ATSDR, in consultation with EPA, sets the priorities for health assessments at NPL sites based upon potential risk to human health, adequacy of existing data, and EPA's NPL and RI/FS schedules.

Citizens also may petition ATSDR to perform a health assessment at any site based upon exposure to the public and environment from a release. As a result of an assessment, followup activities may include pilot health effects studies, full-scale epidemiological studies, development of a registry of exposed persons and health surveillance programs. If the health assessment determines a significant risk to human health, EPA is required to act to reduce exposure and mitigate risk.

State Involvement

SARA expands an already extensive State participation process. Under the new law, States are more formally involved in the initiation, development and selection of remedial actions. State involvement regulations will provide for a number of opportunities to participate including:

- Participation in pre-remedial activities to assess and investigate sites prior to listing on the NPL
- Participation in identification of and long-term planning for all remedial actions in a State
- Opportunity to review and comment on planning documents, technical data, engineering designs or proposed findings and decisions to waive requirements
- Opportunity to participate in negotiations
- Notification of and opportunity for comment on the proposed plan for remedial action
- Concurrence in deleting sites from the NPL

States are also more formally involved in the settlement process. If the State disagrees with EPA's settlement decision not to require compliance with certain State standards, the State may legally challenge EPA's decision.

ENFORCEMENT AND LEGAL ISSUES

Enforcement is a major EPA activity under Superfund. When Congress passed the original Superfund law, it intended that polluters who create environmental problems should correct them whenever possible. EPA can obtain cleanup action by taking the potentially responsible parties (PRPs) to court, reaching an out-of-court settlement or issuing direct administrative orders where there is an endangerment to public health or the environment. The Superfund Amendments clarify and expand enforcement authorities in the areas of settlements with PRPs, citizen suits, criminal and civil penalties, development of an administrative record, and access and information gathering.

- . Settlements: EPA is authorized to enter into settlement agreements with PRPs to conduct site investigations and cleanup actions. In addition, EPA can notify PRPs when EPA determines that negotiations would facilitate reaching an agreement.
- . Citizen Suits: Any person may sue any other person, including the United States or individual states, for an alleged violation of any standard, regulation, condition, requirement or order under CERCLA or for failure to perform "non-discretionary duties" such as a health assessment.

Penalties: The new law increases the criminal penalties for failure to provide notice of a hazardous waste release and makes the submission of false or misleading information a criminal offense.

Administrative Record: The Superfund Amendments require EPA to establish an Administrative Record upon which the selection of a response action will be based. The record must be available to the public at or near the facility at issue. EPA must promulgate regulations for public participation in the development of the Administrative Record for removal and remedial actions.

Access and Information Gathering: The new law strengthens EPA's ability to obtain access to sites to perform investigations and site cleanup.

Federal Facilities

The Superfund Amendments add a new section to CERCLA dealing with hazardous substance releases at Federal facilities. This provision confirms CERCLA's applicability to Federal agencies and requires Federal agency compliance with CERCLA requirements. The Amendments clearly define the process Federal agencies must follow in undertaking remedial action, including a requirement that EPA make the final selection of the remedy if there is a disagreement between the Federal agency and EPA. State and local officials also must be given the opportunity to participate in the planning and selection of any remedial action, including the review of all relevant data. States are given a formal opportunity to review remedies to ensure that State standards are incorporated. The Amendments also set forth a schedule for response actions at Federal facilities including a schedule for preliminary assessments, listing on the National Priorities List, remedial investigations/feasibility studies and remedial actions.

COMMUNITY RELATIONS

The original Superfund law did not explicitly address the issue of community involvement and public participation in the Superfund program. Agency policy, however, has established a citizen participation program. The Superfund Amendments strengthen existing procedures for public participation.

Public Participation Requirements

The Amendments require EPA to:

• Publish a notice and brief analysis of the proposed remedial action plan and make the plan available to the public

- . Provide a reasonable opportunity for submission of written and oral comments and an opportunity for a public meeting
- . Keep a transcript of the public meeting and provide it to the public
- . Publish a notice of the final remedial action plan and make it available to the public before the beginning of any remedial action
- . Prepare a response to each of the significant comments, criticisms and new data submitted on the proposed remedial action plan.

Technical Assistance Grants

This provision represents new program authority under SARA. The Superfund Amendments allow EPA to make grants available to communities affected by a release or threatened release at a National Priorities List (NPL) site. Community members may use these grants to obtain assistance in interpreting technical information on the nature of the hazard and recommended alternatives for investigation and cleanup throughout each stage of the Superfund process. Grants are limited to \$50,000 per site. In addition, the grant recipient is required to contribute at least 20 percent of the total cost of the expert advice.

OTHER ISSUES

The Superfund Amendments of 1986 mandate several ongoing program initiatives that will expand the scope of cleanup operations and EPA's planning and response authorities.

Research and Development (R&D) and Training

The Amendments establish a comprehensive Federal program for research and development, demonstration and training. SARA promotes the development of alternative and innovative treatment technologies for Superfund response and directs EPA to improve capabilities for evaluating human health effects from exposure to hazardous substances.

The provisions represent new and/or expanded authorities for training and R&D not found in the original law. While many training and R&D activities have been ongoing for the past five years, these new provisions clearly increase and define the scope of future activities and provide new research authorities.

Emergency Planning/Community Right-To-Know

Chemical release incidents such as Institute, West Virginia and Bhopal, India, heightened Congressional awareness of the critical need for effective emergency planning. EPA also has recognized this need by establishing the Chemical Emergency Preparedness Program (CEPP). These efforts are mandated in a separate title of the CERCLA Reauthorization Amendments, known as the Emergency Planning and Community Right-to-Know Act of 1986. This title, Title III, includes provisions related to emergency planning, notification and reporting requirements.

Emergency Preparedness

- Planning Entities: States are required to establish State emergency response commissions, emergency planning districts and local emergency planning committees to coordinate and provide technical expertise in planning for responses to emergency releases of hazardous chemicals.
- List of Substances: EPA must publish a list of extremely hazardous substances and publish in regulation form a threshold planning quantity for each substance that if released at a facility would likely pose a hazardous substance emergency. This list provides a focus for local emergency response plans.
- Facility Participation in Planning: Facilities that produce, use or store extremely hazardous substances in excess of established thresholds must notify the State emergency response commission that they are subject to Title III planning requirements. Such facilities must designate a facility emergency coordinator to work with and provide information to the local emergency planning committee.
- Comprehensive Emergency Response Plans: Each local emergency planning committee must prepare an emergency plan within two years of enactment and review that plan at least once a year.
- Emergency Notification: Facilities are required to provide immediate notice of the release of a hazardous substance to the local planning committee and the State commission.

Right-to-Know

- Material Safety Data Sheets (MSDS): Any facility which is required to prepare or have available an MSDS under Occupational Safety and Health Administration (OSHA) regulations must submit an MSDS or a list of MSDS chemicals to the appropriate local emergency planning committee, State emergency response commission and fire department. The MSDS contains information on chemical name, chemical characteristics and health hazards.
- Emergency and Hazardous Chemical Inventory Forms: Any facility required to prepare or have available an MSDS under OSHA regulations shall also complete and submit annually to the appropriate emergency planning entities an inventory form. This form contains information on the amount and general location of chemicals at the facility.
- Toxic Chemical Release Forms: Any facility which produces, processes or otherwise uses "toxic chemicals" in amounts over the published threshold quantity must submit a form to EPA and the designated State official describing all releases that occurred during the year. "Toxic chemicals" are the combined Maryland and New Jersey lists.

Figure 1
Comparison of the Original Law to SARA

ORIGINAL LAW

Removal Program

- . Sets limits at 6 months and \$1 million.
- . Includes waiver to limits based upon three criteria.
- . No provision.

Remedial Program

- . No mandatory schedules or goals.
- . Requires the development and use of criteria and methods for determining extent of remedy. Remedial actions must also be cost-effective and consistent with the National Contingency Plan (NCP).

SARA

Removal Program

- . Raises limits to 1 year and \$2 million.
- . Adds additional waiver criterion for consistency with long-term remedial action.
- . Requires removals to contribute to the efficient performance of any long-term remedial action.

Remedial Program

- . Contains goals for preliminary assessments and site inspections and mandatory schedules for new RI/FS starts and new remedial action starts.
- . Requires remedies to:
 - Be protective of human health and the environment
 - Be cost-effective
 - Attain applicable Federal and State standards
 - Utilize permanent solutions and alternative technologies to the maximum extent practicable.
- . Treatment which reduces the volume, mobility and toxicity of the waste is preferred.

ORIGINAL LAW

- . Provides for ATSDR to establish disease registry, health effects literature inventory, list of restricted areas and to provide health screening and medical care.
- . Provides for State involvement in response actions through cooperative agreements and contracts.

Enforcement Program

- . No provision.
- . No specific provisions in statute. Settlements authorized under Agency policy.
- . No specific provisions in statute. Review of remedy decisions has been on the record.
- . Authorizes criminal penalties for failure to provide required notifications.

SARA

- . Requires ATSDR (with EPA) to prepare list of hazardous substances, to prepare toxicological profiles, and to conduct health effects research and health assessments. A disease registry may also be established.
- . Requires establishment of formal State participation regulations providing for document review and comment and participation in every phase of the program.

Enforcement Program

- . Authorizes citizen suits.
- . Authorizes settlement agreements with PRPs and establishes procedures and tools for reaching settlements.
- . Establishes an administrative record upon which a response action will be based.
- . Provides civil and increases criminal penalties for these activities.

ORIGINAL LAW

- . Prohibits the use of Fund money for remedial action at Federal facilities.

Community Relations

- . No specific provisions in statute. Community relations is authorized under Agency policy.

Research and Development and Training

- . No specific provisions in statute.

Emergency Planning/Community Right-to-Know

- . No specific provisions in statute. Emergency planning and preparedness activities are authorized by the MCP and Agency policy.

SARA

- . Confirms CERCLA's applicability to Federal agencies and requires Federal agency compliance with CERCLA requirements. Also prohibits use of Fund money for remedial actions.

- . Establishes public participation requirements and authorizes technical assistance grants.

Research and Development and Training

- . Establishes a comprehensive research, development and demonstration program for alternative technologies; training programs for hazardous substance response; and hazardous substance research.

Emergency Planning/Community Right-to-Know

- . Establishes a State and local planning structure, emergency notification and reporting requirements for facilities.